IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 246 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE D.A.MEHTA

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MESSRS. NIMIT STEEL PVT. LTD.

Versus

MESSRS. BARODA POWER TRANSMISSION LTD.

Appearance:

MR SN SOPARKAR for Petitioner No. 1-2

DR MAHESH THAKAR for Respondent No. 1

MS MONA N TRIVEDI for Respondent No. 1

CORAM : MR.JUSTICE D.A.MEHTA

Date of decision: 02/05/2002

ORAL JUDGEMENT

The present petition is filed against the respondent - Company under Sections 433 and 434 of the Companies Act, 1956 (the 'Act').

2. The say of the petitioners is that the petitioner - Company supplied various kinds of steel materials between 11th December, 1996 to 19th December, 1996 aggregating in value of Rs.34,85,782/= (Rupees Thirty four lacs eighty five thousand seven hundred eighty two). That the said goods were accepted without any dispute as regards price, quality and quantity. The petitioners further stated that as per the terms of the invoice, interest was chargeable at the rate of 24% per annum in case the payment is not made within 45 days from the date of the invoice. The respondent - Company issued Hundis for the amount of invoices along with interest at the rate of 21% per annum with a promise to discharge the same on the due dates. However, the said hundis were dishonoured upon presentation. Thereafter the respondent - Company issued 8 cheques drawn on Dena Bank, Sayaji Ganj Branch, Baroda and the same also were dishonoured upon presentation. Thereafter once again another 8 cheques issued by the respondent - Company along with letter dated 02-05-1998 came to be issued by the respondent - Company and met the same fate i.e. they were dishonoured at the time of presentation.

3. On 11-05-1998, the petitioners issued a legal notice upon the respondent - Company and by letter dated 01-06-1998, the respondent - Company requested for withdrawal of the said notice promising that it would discharge the liabilities within a very short period of time. A third time, the respondent - Company issued fresh cheques, but the same were not presented as the petitioners were given undertaking that the cheques would be replaced by a demand draft. Thereafter correspondence was exchanged between the parties and the respondent Company on 13-10-1999 confirmed in writing that a sum of Rs.32,99,821/= (Rupees Thirty two lacs ninety nine thousand eight hundred twenty one) is due and payable by the respondent - Company to the petitioners. Once again on 01-01-2000 the said amount was confirmed, in writing, to be outstanding and it was stated that within a period of six months the amount would be paid.

4. Ultimately a statutory notice under Section 433 of the Act was issued on 03-07-2000 but the respondent Company has failed to reply the same or make any payment of the outstanding amount.

5. However, on 06-08-2000, the respondent - Company through its advocate for the first time contended that they had never admitted their liabilities. The petitioners replied to the said letter on 08-08-2000.

6. The petitioners have averred in the petition that on taking search in the office of the Registrar of Companies it is found that the respondent - Company is indebted to the extent of Rs.2,04,42,497/= (Rupees Two crores four lacs forty two thousand four hundred ninety seven) and all the assets including plant and machineries are duly mortgaged with various financial institutions and Bank of Baroda. The petitioners have therefore stated that the substratum of the Company seems to have disappeared and the respondent - Company is not in a position to discharge its liabilities. Hence the present petition.

7. Notice was issued on 21-09-2000. Thereafter, on 25-04-2001 this Court (Coram : R.R.Tripathi, J) passed the following order :

Admit.

Final hearing is fixed on 17.7.2001. Advertisement be issued in the dailies, namely, Indian Express and Loksatta, both of Vadodara edition. Publication in Official Gazette is dispensed with. Publication of the above advertisement is deferred till 18.6.2001.

Sd/-
25.4.2001 (R.R.Tripathi, J)

8. Thereafter it seems that the matter was settled between the parties and Consent Terms dated 24-09-2001 were placed on record and on the basis of the same, the following order came to be passed :

" Mr Harish P. Bhansali, petitioner no.2, and as a Director of petitioner no.1 and Shri Vipul Vora, Director of the respondent-company are present. The petitioners and the respondent-company have filed consent terms indicating the schedule of payment to be made by the respondent-company. Mr Harish Bhansali, petitioner no.2, and director of petitioner no.1-company, admits his signature and terms of settlement. Mr Vipul Vora, Director of the respondent-company also admits the terms of settlement and also his signature thereon.

2 From the consent terms placed on record, it is suggested that the respondent-company intends to make the payment as shown therein.

3 In view of the above consent terms filed and admitted by the parties, the petition does not survive subject to the rights of the petitioners as stated in para 5 of the consent terms. Petition stands dismissed as not surviving in view of the above. No costs.

Sd/-
(N.G.Nandi, J.)"

9. However, as the respondent - Company could not fulfill its commitment as per the Consent Terms, on 18-02-2002 this Court (Coram : M.S.Shah, J) passed an order in Misc. Civil Application No.63 of 2001 reviving and restoring the Company Petition No.246 of 2000.

10. On the same day the Company Petition was also taken up for hearing and the following order was passed :

" The learned counsel for the petitioner submits that since the petition was earlier already admitted and advertised, the petition may be fixed for final hearing.

2. In the facts and circumstances of the case, since the petition was withdrawn after publication of the advertisements, it would be just and proper to direct that the notice of admission of the petition and the date of final hearing shall again be published in daily newspapers - Loksatta (Baroda edition) and Indian Express (Baroda edition). The petition shall be notified for final hearing on 18.3.2002. Publication of notice in the official gazette is dispensed with.

3. For considering the prayer being made by the learned counsel for the petitioner for appointment of Provisional Liquidator, S.O. to 25.2.2002.

Sd/-
(M.S.Shah, J) "

11. Accordingly the advertisements have duly been published and affidavit dated 06-04-2002 to the said effect has come on record. Since then the matter has been adjourned number of times and even today, when the matter is called out, there is no appearance on behalf of the respondent - Company.

12. In view of what is stated hereinbefore, it is apparent that the respondent - Company is not in sound financial health and is not in a position to discharge its liabilities. Thus, it is a fit case where an order of winding up requires to be made.

It is hereby ordered that Messrs. Baroda Power Transmission Ltd. be wound up. The Official Liquidator attached to this Court is hereby appointed as Liquidator of the said Company and he is directed to take possession of all the assets, properties, affairs and records of the respondent - Company including those at its factory premises and the Baroda Office.

This petition stands allowed accordingly.

(D.A.Mehta, J)
'Bhavesh'